

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:18-cv-00182-RJC  
(3:15-cr-00271-RJC-1)**

<b>JAMES ANTONIO LANGSTON,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b><u>ORDER</u></b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Respondent.</b>	)	
<hr/>	)	

**THIS MATTER** is before the Court upon Petitioner James Antonio Langston’s Motion to Dismiss his pro-se Motion to Vacate, Set Aside or Correct Sentence, 28 U.S.C. § 2255. (Doc. No. 3).

Under Rule 41 of the Federal Rules of Civil Procedure, a petitioner may take a voluntary dismissal without a court order “before the opposing party serves either an answer or a motion for summary judgment.” See FED. R. CIV. P. 41(a)(1)(A)(i). Although the Government has been ordered to respond to Petitioner’s Motion to Vacate (Doc. No. 2), it has not yet filed an answer or motion for summary judgment. Accordingly, the Court shall construe Petitioner’s Motion to Dismiss as a Notice of Voluntary Dismissal pursuant to Rule 41(a)(1)(A)(i).

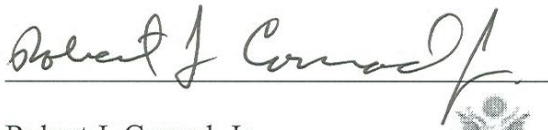
A voluntary dismissal under Rule 41(a)(1)(i) is “a matter of unconditional right and is self-executing, i.e., it is effective at the moment the notice is filed with the clerk and no judicial approval is required.” In re Matthews, 395 F.3d 477, 480 (4th Cir. 2005). As such, Petitioner’s notice of dismissal has terminated this action. Moreover, the dismissal is without prejudice unless the notice states otherwise or the petitioner “previously dismissed any federal- or state-

court action based on or including the same claim[.]” FED. R. CIV. P. 41(a)(1)(B).

**IT IS, THEREFORE, ORDERED** that the Clerk of Court shall docket Petitioner’s Motion to Dismiss (Doc. No. 3) as a Notice of Voluntary Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), and then **seal** the Notice of Voluntary Dismissal, with exceptions made for the Court and Respondent.

**IT IS FURTHER ORDERED** that the Clerk shall terminate this action.

Signed: July 11, 2018

A handwritten signature in black ink, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.  
United States District Judge

